

April 19, 2023

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

*In Re* FLINT WATER CASES Case No. 16-10444

DISCOVERY CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY  
UNITED STATES DISTRICT JUDGE

APRIL 19, 2023

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*(Appearances continued on next page)*

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P R O C E E D I N G S

THE CLERK: Calling the Flint Water Cases.

THE COURT: All right. Well, Jeseca already has your appearances on the record. So we will dispense with that formality.

And we have an agenda with six things. I'm hoping number 5 and 6 were resolved, but I didn't get word that they were. So perhaps we'll need to go over those.

But the first one is the individual plaintiffs' request to address an issue related to a deposition of a nonparty, Jennifer Vlach.

So would that be you, Mr. Stern?

MR. STERN: Yes, Your Honor. Corey Stern for the plaintiff. Good morning or good afternoon.

This started out with a deposition of Jennifer Kaufmann. You may recall, Your Honor, that there was some briefing and Veolia had opposed the deposition. And when we went to take the deposition, it turned out that after all of that briefing, after all of that back and forth, that witness knew nothing about the Twitter account, knew nothing about the advertisement campaign, and no one ever let us know that.

And so she had mentioned a name of another Jennifer from the same company. Jennifer Vlach --

(Technical difficulties)

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1 THE COURT: Did Mr. Stern freeze for anybody else?

2 MR. OLSEN: He did.

3 THE COURT: Let's -- Ms. Daly, can you text him and  
4 let him know?

5 MS. DALY: Yes, Your Honor. I was just about to do  
6 that.

7 THE COURT: Okay.

8 MS. DALY: Let him know he's frozen.

9 MR. STERN: Can y'all hear me?

10 MS. DALY: Oh, there we go.

11 THE COURT: Now we can.

12 MR. STERN: Sorry. I don't know where I left off,  
13 but I've since been --

14 THE COURT: Yeah. We last heard that there had been  
15 some -- that you took Jennifer Kaufmann's deposition. She  
16 knew nothing about the Twitter account issue. And that's all  
17 we know.

18 MR. STERN: And so she had mentioned the name of  
19 another Jennifer who worked for the same company at the same  
20 time. And we sent a subpoena for her deposition.

21 I had asked the Veolia attorneys to confirm that this  
22 was the right person so that I didn't spend or none of us  
23 spent any time as we did on the Kaufmann deposition going down  
24 a rabbit hole of somebody who had no knowledge.

25 And since that time, I've been contacted by a private

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1 attorney for her who we were supposed to speak at noon today  
2 eastern time, but I did not hear from him. And I think at  
3 this point it doesn't need to be addressed I guess by the  
4 Court right now because I'm going to wait to see what the  
5 private lawyer has to say about her knowledge. But just  
6 trying --

7 MR. OLSEN: Your Honor, I think I can tell Mr. Stern  
8 what I think he's going to say, because we made the same  
9 inquiry that he did. And just by --

10 THE COURT: Okay. Just a minute. Then this is the  
11 part where I'll say, "Okay. Please do that."

12 MR. OLSEN: Okay. I -- and just to back up a little  
13 bit, we did have a hearing on Ms. Kaufmann where I said on the  
14 record that we didn't think Ms. Kaufmann had anything to do  
15 with the PR issues. So I don't know why there was confusion  
16 about that.

17 But I'll say the same thing about this woman. We --  
18 I don't know this woman. But we also had a discussion with  
19 the attorney that she has hired. And we've been informed that  
20 she did some work with respect to the Suez merger and VNA's  
21 Suez merger, but she did not have any involvement with Flint  
22 or any of the issues related to Flint or PR related to Flint.

23 So I think we're going to end up in the same place  
24 with Ms. Vlach and her lawyer can have that conversation with  
25 Mr. Stern. But that's what we know, so I suspect that's what

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1 he's going to tell Mr. Stern as well.

2 THE COURT: Do you know who does have the information  
3 regarding --

4 MR. OLSEN: So good question, Your Honor.

5 THE COURT: Just a minute.

6 MR. OLSEN: Sorry.

7 THE COURT: Count to 3. After I stop speaking, count  
8 silently to 3 and then you start speaking. That will be maybe  
9 just a way of handling this.

10 So what we're looking at is -- what I understand Mr.  
11 Stern to be concerned about is looking further into the what's  
12 been called the dynamic search advertising feature, or  
13 whatever it is that VNA was using, that he is concerned was  
14 reaching jurors in Bellwether I and could reach jurors in  
15 another -- either in our upcoming class case or a future  
16 bellwether trial.

17 And so do you know who would know what was -- what  
18 the nature of that advertising was at one of these companies?

19 MR. OLSEN: So two things. With respect to this  
20 person that we've been talking about, the two Jennifers, that  
21 came from Mr. Connor's deposition where he said he wasn't sure  
22 about who this person was, didn't remember a name. And  
23 guessed at Jennifer. So I don't know that there is such a  
24 Jennifer.

25 But with respect to the question of the dynamic ads,

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1 that issue came up after the geotargeting issue was put to bed  
2 and we've produced documents, analytical data, other  
3 information.

4 We even produced to Mr. Stern a declaration from an  
5 expert in Google ads and social media who analyzed all of that  
6 data and all of those documents and concluded that none of the  
7 dynamic ads or the advertising were targeted in any way to  
8 jurors or perspective jurors. And we've provided the  
9 advertising analytical data by zip code and other information  
10 to demonstrate exactly that.

11 But I don't know who this person Mr. Connor referred  
12 to in his deposition. If there is a person, I don't know who  
13 that is.

14 THE COURT: Okay. All right. Well, it sounds like  
15 for now Mr. Stern is going to speak with Jennifer number 2's  
16 lawyer and try to find out what she knows, if anything. And  
17 then he'll go from there.

18 MR. STERN: Your Honor, that's true. But since  
19 Mr. Olsen just made that very thorough statement, I think a  
20 good question then to ask -- and I wasn't planning on even  
21 arguing anything about this today. I was just giving the  
22 background about why the judge didn't -- why the Court didn't  
23 need to address it.

24 But since Mr. Olsen just said all that, we know that  
25 Actum is a company that engaged with Veolia and that someone



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1 from Actum told someone from VNA when responding about the  
2 Twitter account, quote, "That was us," quote.

3 And so maybe Mr. Olsen and his client could at least  
4 tell us who at Actum played a role on behalf of VNA as part of  
5 the VNA Flint facts Twitter handle. Because someone at Veolia  
6 knows who at Actum they were engaged with on this issue,  
7 whether her name was Jennifer or Corey or Michael or whatever.  
8 And so maybe that's the best question.

9 And there's no way that no one at Veolia knows who at  
10 Actum was part of the account that dealt with Flint during the  
11 Bellwether I trial.

12 THE COURT: Well, here's what we'll do. I'll ask  
13 Mr. Olsen to have a conversation with you following this  
14 hearing so that we don't all go through this process with the  
15 two of you.

16 But Mr. Olsen, please, and Mr. Stern please discuss  
17 that. Because if there is somebody at this company called  
18 Actum that Veolia is aware of, that would be the fastest way  
19 to make progress on this issue.

20 So the second issue on the agenda is another one that  
21 I think Mr. Stern submitted. And it is regarding various  
22 amended requests for production of documents that was issued  
23 to VNA and requests for admission and Veolia's responses.

24 So tell me more about that, please.

25 MR. STERN: So we've met and conferred about this on

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1 numerous occasions. And at the moment, I don't believe  
2 there's anything for Your Honor to become involved with.

3 I do and I've told Veolia that we intended to at  
4 least flag for Your Honor. There is one issue that we  
5 anticipate is going to be a part of this going forward.

6 And at some point Your Honor made the determination  
7 that documents and information kept in the possession of the  
8 Veolia entity's post January 2017 had no relevance to this  
9 case and discover was limited to pre 2017 information.

10 We believe at this point that that date range not  
11 just for the public relations part of this, but even for  
12 Veolia's activities associated with what they did between 2015  
13 and 2016, do have relevance.

14 We intend to seek documents. And I don't want to get  
15 into why, but there was testimony at trial at least -- I'll  
16 give you a little background -- that at one point Veolia went  
17 into crisis mode. And there was testimony from at least one  
18 Veolia employee that they did utilize either internal chat or  
19 text messages.

20 You'll recall from trial that one of the large issues  
21 was the LeeAnne Walters' residence and how nobody told Veolia  
22 anything. And there very well may be communications post  
23 January 2017 as part of that crisis management that discusses  
24 what people knew or didn't know about LeeAnne Walters even  
25 though it's not within the time period that Your Honor deemed

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1 to be relevant for purposes of discovery back in 2016 when  
2 this issue first came up.

3 I think Veolia would like the opportunity, if this  
4 does come up, to submit a one- or two-page letter brief. And  
5 obviously they should have every opportunity to present their  
6 position on this as we would want every opportunity to present  
7 ours.

8 But in -- as part of this issue about the ongoing  
9 discovery, the first amended, second amended, third amended,  
10 fourth amended, and the second request for admissions, that is  
11 going to be an issue irrespective of what is produced.

12 And I just wanted to flag that for Your Honor.

13 THE COURT: Okay. Thank you.

14 Now there's an issue with VNA's privilege log.

15 MR. STERN: We've not resolved it, but we have agreed  
16 to not argue it today because there will be more information  
17 provided from Veolia to the plaintiffs next week.

18 THE COURT: Okay. Thank you.

19 And now there is the issue of the proposed protective  
20 order regarding Dr. Specht's MATLAB code. And I received the  
21 very short briefing or whatever we're going to call it on this  
22 as well as the joint proposal for a protective order.

23 Is there anything further from plaintiffs that you  
24 would like to provide, Mr. Stern?

25 MR. STERN: No, Your Honor.

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1 THE COURT: Anything further, Mr. Olsen?

2 MR. OLSEN: The only thing I would add, Your Honor,  
3 is as you're aware, we agreed to a very robust protective  
4 order.

5 The only two issues we have issue with is the wildly  
6 exorbitant liquidated damages provision. We looked far and  
7 wide and found no precedent for such a thing.

8 We found a case, Sony Computer, talking about and  
9 rejecting a smaller \$50,000 liquidated damages provision  
10 saying there's scant or no support for that.

11 We think imposing a liquidated damages provision on  
12 jointly and severally against VNA and all active counsel of  
13 record is ridiculous and unnecessary.

14 If there is -- there's never been a violation of the  
15 protective order to date by VNA or anybody associated with  
16 VNA. And if that ever happened, the Court is well within its  
17 power and ability to take appropriate action in imposing a  
18 liquidated damage provision is unnecessary and as framed we  
19 think ridiculous.

20 The only other issue we took was a declaration in  
21 there or adding language declaring the code proprietary. We  
22 have no problem if the protective order says that Dr. Specht  
23 or plaintiffs believe it's proprietary. But we haven't even  
24 seen the code. And so we just didn't want to agree that this  
25 is proprietary.

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1 THE COURT: Okay. Well, let me say the following.

2 I'm starting with the issue of VNA's challenge to the  
3 use of the word proprietary and confidential. I've already  
4 made a decision on that in past orders related to this  
5 dispute. And I have described the code as proprietary and  
6 confidential and that wasn't challenged by VNA at the time.

7 I went back to Black's Law Dictionary to make sure I  
8 understood what proprietary meant. And according to Black's  
9 dictionary, it simply means holding as property. And when you  
10 look back at what Dr. Specht has described with respect to  
11 this code in his own declarations and so on, is he has  
12 described it as proprietary. And it's clearly confidential.  
13 That's why we have this issue in the first place.

14 But he -- Dr. Specht himself stated that he has a --  
15 "I hold the copyright over it as well because I developed this  
16 MATLAB code." So that sort of indicates that he -- that it's  
17 proprietary.

18 And VNA, in your own briefing, you've indicated that  
19 the Dr. Specht's device does not, quote, "spit out a bone lead  
20 reading" but rather, quote, "he developed his own algorithms  
21 and formulas to take the data generated by his device, filter  
22 out other factors, and calculate a lead measurement.

23 So it seems that you've acknowledged that this is his  
24 product that your expert couldn't repeat without getting his  
25 code. And so that's the whole dispute.

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1           So I have no problem with referring to it as  
2       proprietary and confidential. So that language will stay in.

3           The next issue, as I see it in here, is that it looks  
4       as if -- but maybe you're not concerned about this now -- on  
5       page 2 1B, that you did not want to insert the names of VNA  
6       counsel who will be signing the attachment here, that they  
7       will live -- counsel and/or expert. You didn't want to insert  
8       the name in addition to Dr. Huber of those lawyers.

9           And tell me why that is.

10          MR. OLSEN: No, Your Honor. We have no problem with  
11       that. We just said once we agree to a protective order and  
12       know what it is, we'll provide the names.

13          THE COURT: Okay. Good.

14          MR. OLSEN: And you're right it's going to be  
15       Dr. Huber and a handful of lawyers working on the Specht  
16       issue.

17          THE COURT: Okay. That's resolved. So then we get  
18       to this issue of liquidated damages which I see was to --  
19       plaintiffs are seeking \$40 million for either an intentional  
20       or unintentional violation. Or 50 percent of the fees paid to  
21       VNA since January 1, 2016, related to the Flint Water Crisis.

22          That was a creative sort of effort there. And what  
23       I'll do here is take out the words "intentional and  
24       unintentional". And it will just say a violation of this  
25       order may subject each attorney with -- those who have signed

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1 the -- what's it called, Exhibit A, or anyone who violates it  
2 -- you're going to figure out this language. But it may  
3 subject them to a fine to be determined by the Court.

4 So I just would need to tether the number to the  
5 damage that's caused and to hear more about it at that time.

6 MR. OLSEN: Okay, Your Honor. We will draft it  
7 accordingly.

8 THE COURT: Okay. Thank you. So that will be the  
9 solution there. Okay. Now --

10 MR. STERN: Your Honor?

11 THE COURT: Yes.

12 MR. STERN: May I just ask one question.

13 THE COURT: Sure.

14 MR. STERN: Not about the part that you just  
15 referenced. But about the insertion of names part, which  
16 Mr. Olsen said now there's no issue with. I assume that those  
17 names will be provided before the entry of the protective  
18 order.

19 Because we've met and conferred about this on  
20 numerous occasions with Mr. Ter Molen. We've never met and  
21 conferred about it with Mr. Olsen. And this is the first time  
22 that anyone has said there's no issue with this. And it's  
23 important to Dr. Specht to know who the individuals are that  
24 are subject to this protective order prior to its entry.

25 So I just want to be clear that that will -- I want

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1 to make sure that it's the Court's desire for that to happen  
2 prior to entry.

3 MR. OLSEN: Yes is the answer. We will provide them  
4 prior to entry --

5 THE COURT: Well, he was actually addressing  
6 myself about --

7 MR. OLSEN: Okay.

8 THE COURT: -- whether I wanted to see that. And I  
9 do because I -- it's to be -- it is so ordered at the bottom.  
10 So I'll need it to be filled out, just as Mr. Olsen seemed to  
11 be suggesting.

12 Is that your understanding, Mr. Olsen?

13 MR. OLSEN: Yes. And I think we said that to Mr.  
14 Stern's colleague. But yes is the answer. We will provide  
15 the names to go into the protective order.

16 THE COURT: Okay. Okay. So now, Mr. Olsen, you have  
17 a request to discuss Bellwether II, the pool of 40 potential  
18 plaintiffs and their discovery responses, and the pool  
19 reduction schedule.

20 MR. OLSEN: I think we can take this off today's  
21 agenda, Your Honor.

22 We have met and conferred with plaintiffs' counsel.  
23 They've agreed there needs to be some supplemental discovery.  
24 We are going to agree to amend the schedule for further  
25 narrowing the pool until we get that discovery. And we're



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1 meeting and conferring to have that amendment to provide to  
2 Your Honor.

3 So assuming you don't have any objection to us so  
4 amending the schedule, we can take this off calendar for today  
5 and hopefully work it out.

6 THE COURT: Okay. I don't have any problem with  
7 that. Thank you.

8 And now there's VNA's request to discuss class  
9 plaintiffs use of experts from the class certification stage  
10 for the issues class trial I assume.

11 MR. OLSEN: Yes, Your Honor.

12 And I'm not sure if this is resolved or not. The  
13 only reason we're raising this is there were a number of  
14 experts. Ducatman, Gamble, Gardoni, Goovaerts, Keating,  
15 Lanphear, and Pogorilich who --

16 THE COURT: Can you spell the last one?

17 MR. OLSEN: P-o-g-o-r-i-l-i-c-h.

18 Who are used in connection with class certification  
19 but not resubmitted for the trial. And so we just were  
20 looking for confirmation that they weren't going to be used at  
21 trial so we didn't have to file Daubert motions with respect  
22 to any of them.

23 Class plaintiffs' counsel got back to us saying that  
24 with a possible exception of Gardoni, they did not think that  
25 they would call and had no plan to call those witnesses at

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1 trial but would let us know in advance of the Daubert date if  
2 that changed.

3 And since the Daubert date is May 12, we're just  
4 quickly approaching that. And we certainly would prefer not  
5 to address any of this if we don't need to.

6 So we're just trying to get some confirmation that  
7 that is the case and these experts are off the table. We  
8 don't have to file those motions.

9 THE COURT: Well, there's a couple of reasons you  
10 don't have to file those motions. But I -- someone can  
11 respond in just a minute.

12 But I want to talk about the Daubert motion practice  
13 in general. I would urge you, Mr. Olsen, in the strongest  
14 possible terms to read the case law on Daubert motions.

15 And in our last trial, VNA challenged each and every  
16 one of plaintiffs' expert on all of the Daubert prongs.  
17 You're not qualified. This isn't science. You know, the  
18 whole thing. It's not scientific. And it wasn't successful.

19 There were one or two very small portions of expert  
20 reports that -- where I agreed with your motion. But not that  
21 the person wasn't qualified to testify. Just that they had  
22 not provided an explanation for how they reached one or two  
23 narrow parts of their conclusions.

24 So it's not helpful to me. It's not helpful to your  
25 client to put these -- throw these motions in here thinking,

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1 oh, I know I'll preserve the record on appeal. Certainly it  
2 will be there on appeal that you've said all of this. But if  
3 you read the case law, it's not going to help your appeal.

4 So I just would urge you for the sake of all of us --  
5 but I'm thinking of myself most right now -- that -- and I'm  
6 sure this will have no impact so maybe I'll just stop right  
7 there.

8 So it's a lot of work. What happens with these  
9 motions is there has to be a response. Of course you file a  
10 reply. And then over here at the court, we have to do a lot  
11 of work that would otherwise we would just hear this testimony  
12 and along with the jury and I would be ruling on objections at  
13 that time.

14 But I just urge you to think about that.

15 But is there a response from class plaintiffs'  
16 counsel regarding whether Mr. Olsen's understanding of who  
17 you're using from the certification stage is correct?

18 MR. OLSEN: Ted, you're on mute.

19 MR. STERN: Ted, you're on mute.

20 MR. LEOPOLD: Thank you. I'm sorry.

21 Good afternoon, Your Honor. Ted Leopold, class  
22 counsel, to address this issue.

23 Generally, Your Honor, we have tried to make it as  
24 easy as we can. And we have informed VNA's counsel that in  
25 all likelihood, we will not be using six of these or seven or

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1 so of these experts.

2           However, just along the lines of what you've just  
3 been saying, Your Honor, we're so far away from trial that  
4 it's a little bit hard with a lot of various issues still  
5 pending as Your Honor knows. Summary judgment issues, the  
6 third party defendant issues that is going to have a strong  
7 indication on where or time-wise and witnesses that may or may  
8 not be needed.

9           So all we ask for at this point in time we don't  
10 intend to be using those experts.

11           However, as we move forward towards trial and of  
12 course with sufficient amount of time so no one would be  
13 prejudiced, clearly not VNA nor the Court, that if things  
14 change based upon some rulings of the Court and some other  
15 issues, that with appropriate timeliness, we would inform VNA  
16 that one or more of these experts may be used and we can  
17 address that issue at that time so that we don't take up the  
18 Court's time and everybody else's commitments on replying to  
19 these what in all likelihood may be irrelevant Daubert  
20 motions.

21           THE COURT: Here's -- thank you, Mr. Leopold.

22           Your indication that we're so far from the beginning  
23 of trial is not -- I guess if you count seconds and  
24 nanoseconds between now and October 3, there's a good number  
25 of days in there.

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1 But I do want to let you know that following this  
2 hearing, I have asked Leslie Calhoun, my law clerk, to send  
3 the schedule. I have filled in dates. I have also changed a  
4 couple of the dates that have been agreed upon because I  
5 absolutely have to build in an opportunity to decide the many  
6 motions that will be forthcoming.

7 It's all good and well for everybody to brief these  
8 issues. But somebody has to read all of this briefing and  
9 entertain further argument and decide each of the motions.

10 So when Leslie sends that to all you this  
11 afternoon -- and I've asked her to send it to bellwether  
12 counsel or individual counsel as well, just so everybody sort  
13 of knows what we're looking at -- I want you to pay very close  
14 attention to the fact that I am indicating in this new  
15 schedule that there will be no stipulation. I will not  
16 entertain motions for extension of time.

17 Just we'll never get to the finish line if I do.

18 I also won't entertain motions for extensions of page  
19 limits that are otherwise set by the Eastern District of  
20 Michigan local rules. Because otherwise, I won't be able to  
21 get through reading all of your motions.

22 What I'll have to do is stop. I'll just stop at page  
23 25 if it's a dispositive motion. I'll just stop reading. So  
24 you might be submitting a lot more pages, but I just will not  
25 be able to read them. So I think you should have all your

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1 arguments in the pages that I'll read.

2 So I just draw that to your attention because I've  
3 written that in this new schedule.

4 So what will happen is she's going to email that to  
5 you so you can take a close look at it. And we will have a  
6 discussion of it later in the month so that we all know what  
7 we're doing here and we can each do our part responsibly and  
8 carefully.

9 So is there anything else today?

10 MR. OLSEN: Your Honor, just to follow-up on that. I  
11 don't remember if it was Mr. Leopold or his colleague who had  
12 suggested they would let us know well in advance of that May  
13 12 Daubert deadline. So I hope we can get an answer on those  
14 experts in the next week or two. And so just so we don't have  
15 to --

16 THE COURT: The problem is -- I mean, I hear what Mr.  
17 Leopold is saying, which is that the briefing on the nonparty  
18 at fault issue is not going to be done in time for a decision  
19 to be made prior to May 12.

20 So Mr. Leopold, I would just be overly cautious in  
21 letting VNA know who you think you're going to use.

22 MR. LEOPOLD: And I appreciate that, Your Honor. And  
23 we've done the best that we can at this point I guess the best  
24 thing that we can do is at this point these individuals, again  
25 depending on what happens between now and the May timeframe

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1 when the Dauberts are due, we may know more and we can say  
2 definitively that A, B, or C will be.

3 But at this point in time, we don't anticipate. And  
4 if we have to, of course, seek leave of court, I just want the  
5 record to be clear that, you know, depending on what happens  
6 in the near future, we may have to amend that and tell VNA we  
7 need to add one or two people based upon what perhaps the  
8 Court may rule or some other issues.

9 And we've -- that's about as best as we can do at  
10 this point because we just don't have the full picture of  
11 where we're going to be in maybe four to six weeks.

12 THE COURT: Let me tell you this, I found your motion  
13 to strike regarding the nonparty at fault or motion for  
14 judgment as a matter of law. I forget what you called it. I  
15 found it very interesting. I'm looking forward to reading the  
16 response. But I can't say right now what the decision will  
17 be.

18 So I think you should work on the assumption that as  
19 of today, the nonparty at fault issue is in there. I found it  
20 interesting. I found it to be compelling and thoughtful what  
21 you submitted.

22 MR. LEOPOLD: Thank you.

23 THE COURT: But I haven't seen the response. So  
24 that's how this process works. Something comes in, I think,  
25 oh, so.

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1                   What?

2                   MR. LEOPOLD: And Your Honor, just to be crystal  
3 clear, not all of these experts that we potentially will not  
4 be calling address specifically third party related issues.

5                   THE COURT: Okay.

6                   MR. LEOPOLD: They're just a variety, as Your Honor  
7 is aware, a number of different issues that since -- and I  
8 realize we're not far from trial. But in terms of actually  
9 figuring out who, what, and when are going to testify and what  
10 issues, we just have some open ended issues over the next  
11 several weeks that, depending on what may happen, can create a  
12 potential where we may need to come back to the Court and say  
13 this one individual may need to be added.

14                   And we, of course, will work with VNA to do whatever  
15 they want to do about those issues. I'm not saying that's  
16 going to happen. We just don't want to be prejudiced by  
17 saying today these seven people are not going to testify so  
18 far ahead of trial.

19                   THE COURT: Okay. But soon you'll have to say  
20 because there's a May 12 cutoff that's not going the move, so.

21                   MR. LEOPOLD: Okay.

22                   MR. OLSEN: And maybe, Your Honor, maybe we can skin  
23 this cat, as Mr. Leopold suggested, if there is one or two of  
24 these seven experts that they have a different view on they'll  
25 seek leave of court to add them, maybe we can -- this is



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1 entirely up to you obviously, Your Honor.

2 But maybe we can reserve then if they add one or two  
3 of these experts, maybe we then address that with a Daubert  
4 motion or something so we don't have to file six or seven  
5 motions now as opposed to later.

6 THE COURT: Okay. Well, let's just see how this  
7 issue develops.

8 MR. LEOPOLD: That's what we're trying to, I think  
9 both Mike and myself, are trying to accomplish for Your Honor  
10 is to. In all likelihood, Judge, we're not going to be  
11 calling these people. So we don't want to say, yes, we're  
12 going to call them and then have all this extra paperwork only  
13 to be not prejudiced down the road.

14 So I think if the parties can work together -- and it  
15 seems like VNA's counsel and us can do that. Again, I don't  
16 think it's going to be more than if it is even anybody else,  
17 one or two people.

18 We just don't want to burden the Court as opposed to  
19 saying since we don't know what we're going to do right now,  
20 here's all six. We're going to have them all testify and we  
21 burden the Court with all the paper and things of that sort.  
22 We're just trying to prevent that.

23 THE COURT: And to be clear, I've read the Daubert  
24 motions on most of the names I think you identified,  
25 Mr. Olsen. Because you already filed Daubert motions with the

1 class certification motion even though I didn't decide most of  
2 them at that time, so.

3 MR. OLSEN: And it was a different standard applied  
4 at that time for class cert.

5 THE COURT: It was, yep. Okey dokey.

6 MR. STERN: Your Honor?

7 THE COURT: Yes.

8 MR. STERN: Sorry. This is Corey Stern. I just  
9 wanted to apologize to the Court and to VNA. I did get an  
10 email on Monday from Mr. Ter Molen on that issue of the names  
11 of attorneys wherein he said we will provide specific names as  
12 appropriate once the Court has resolved the open issues. And  
13 I was wrong when I said that this is the first I've heard  
14 that. Because it was in an email from Mr. Ter Molen. And I  
15 would be remiss if I didn't just admit that. And so I  
16 apologize for misstating that.

17 I didn't misspeak because that's what I thought. But  
18 I got it wrong. And that's on me.

19 THE COURT: Okay. Thank you. All right. Thank you,  
20 all.

21 MR. CAMPBELL: Your Honor?

22 THE COURT: Yes.

23 MR. CAMPBELL: This is James Campbell, Your Honor. I  
24 just had one issue on the Bellwether II. And I just wanted to  
25 be clear.

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1           Your Honor was kind enough to hear Mr. Olsen and Mr.  
2           Lanciotti on the schedule. I just wanted to remind the Court  
3           that our selections for the Bellwether II cases I think are  
4           due next -- a week from Friday. So I just didn't want to have  
5           -- you know, I think we're working together.

6           We're going to agree to an extension if it's okay  
7           with Your Honor. But given that that was an important date, I  
8           just wanted you to know that it's right on us, that date, that  
9           we would need more time for.

10          THE COURT: That's okay. Especially -- my  
11          unwillingness to see extensions on dates relates right now to  
12          the class trial. So that will work just fine.

13          MR. CAMPBELL: Thank you, Your Honor.

14          THE COURT: Yeah. Thank you.

15          MR. STERN: Your Honor, one last question.

16          THE COURT: Sure.

17          MR. STERN: And if there is a change in the -- the  
18          last time we met -- and I don't recall if it was a discovery  
19          conference or if it was a full out status conference. But  
20          Your Honor commented or at least eluded to the fact that there  
21          might be a change in the timing of the Bellwether III trial.

22          I'm not pushing on that issue, but it's  
23          understandable that at this point the Court is focused heavily  
24          on the class trial and the deadlines. And I know there's been  
25          some exchanges of time limits between the parties.

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1           If, in fact, there's going to be a change to the  
2 Bellwether III trial start date, you know, we have hotels  
3 booked. We have those kind of things. Again not the Court's  
4 main concern at this point. But as soon as anyone knows, if  
5 we can be informed, that would be very helpful for vendors,  
6 for scheduling purposes and those types of things.

7           THE COURT: Right. Mr. Stern, no, that is on my  
8 mind. All of the above is on my mind. Both the details for  
9 counsel in the class trial as well as those for Bellwether  
10 III. I think you can assume that we can't start that trial in  
11 mid-January. Because with the holiday, Thanksgiving,  
12 Christmas holiday, New Year's holiday, school holidays, I  
13 don't know how we would be able to start it in January.

14           Partly because if we're going to use a jury  
15 questionnaire, I have to bring those 200 jurors in, swear them  
16 in to answer truthfully and accurately, and we'll be in the  
17 middle of the class trial and I can't spend all day swearing  
18 jurors in for several days in a row. So just it's going to  
19 have to be postponed.

20           MR. STERN: Okay.

21           THE COURT: Good.

22           MR. STERN: Thank you, Judge.

23           THE COURT: All right. Well, thank you. And for  
24 Mr. Williams and Mr. Stern, I'm currently working on the  
25 motion related to the FTCA adult plaintiffs or claimants.

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1 MR. WILLIAMS: Thank you, Your Honor. I appreciate  
2 that.

3 THE COURT: I'll get it to you as soon as I can.

4 MR. STERN: Thank you.

5 (Proceedings Concluded)

6 - - -

7 CERTIFICATE OF OFFICIAL COURT REPORTER

8 I, Jeseca C. Eddington, Federal Official Court  
9 Reporter, do hereby certify the foregoing 29 pages are a true  
10 and correct transcript of the above entitled proceedings.

11 /s/ JESECA C. EDDINGTON  
12 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

04/22/2023  
Date

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